Mark S. Gietzen (Pro Se)
5575 South Mosley Street
Wichita, KS 67216-3631
Phone (316) 522-8866

IN THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS
CIVIL DEPARTMENT

(Small Claims Procedure)

IN THE MATTER OF)
)
Mark S. Gietzen)
Plaintiff,)
) **Case No. 07SC1015**
and)
)
George R. Tiller)
5101 East Kellogg Drive)
Wichita, KS 67218-1625)
Defendant)
_____)
Pursuant to K.S.A. Chapter 61, Kansas Statutes Annotated

RESPONSE TO DEFENDANT'S MOTION FOR JUDGMENT AGAINST PLAINTIFF

1. Comes now, the Plaintiff, Mark S. Gietzen, with a response to the Defendant's Motion for Judgment Against Plaintiff, and hereby petitions the Court to deny the Defendant's motion for the following reasons:

a. The Defendant's primary argument for judgment against the Plaintiff is based on an incorrect interpretation of a statute of limitations, KSA 60-514(b) which does not even apply to Small Claims Actions. *(The Petition Form,* "Civil–SC No. 2" *for filing a Small Claim does not even ask for a date from which to calculate any statute of limitation.)* And,

b. Even if KSA 60-514(b) applied to Small Claims Actions, the Defendant's motion completely ignores the fact that a vehicle was used in the Defendant's assault, and KSA 60-514(b) does not apply to Aggravated Assault. And,

c. The video evidence of the incident, which will be shown at trial, will show that this is a case of either Attempted Murder, OR, Attempted Vehicular Manslaughter, OR, Aggravated Assault with a deadly weapon. And,

d. Regardless of how the Defendant attempts to mislead The Court by incorrectly framing the incident, the Plaintiff hereby states that on April 5, 2006, the Defendant did commit an act of either: Attempted Murder, Attempted Vehicular Manslaughter, or successful Aggravated Assault with a deadly weapon, i.e., his Jeep.

e. Therefore, the actual applicable statute of limitations, if any were to be applied in this case, is either, 2 years, 5 years, or no time limitation whatsoever.

2. The Defendant's secondary argument for judgment against the Plaintiff is based on a totally false statement; i.e., that the Plaintiff incurred no actual damages, and that the Plaintiff sustained no permanent injury. In fact the Plaintiff did suffer actual damages and a considerable amount of time off work. Furthermore, it is now apparent that it is too early to tell if the impact of the Defendants vehicle against the Plaintiff's hip caused a permanent injury.

(Pain in the spot where the head-light grill of the Defendant's vehicle struck the Plaintiff's hip has returned intermittently, after being completely gone for a time. It is now noticeable only when removing shoes from a standing position, and occurs only when there is a downward tug on my left leg, whereas immediately following the incident the pain was 24 hours per day, for several months. Although the hip pain is sharp while removing shoes from a standing position, it is less severe than it was in the past. The Plaintiff therefore remains hopeful of a total recovery with no permanent damage as a result of this incident.)

3. The Defendant's secondary argument for judgment against the Plaintiff also implies that professional medical treatment in a hospital or doctor's office is required by law, when in fact no such requirement exists. The Plaintiff is aware that an average person, who received the kind of injuries inflicted upon the Plaintiff by the Defendant, would have been taken from the scene by an ambulance, and placed in a hospital for an extended stay. However, the Plaintiff did not seek professional medical attention for the following reasons:

a. The Plaintiff has military training in first aid, in addition to extensive veterinary medical experience, and was capable to correctly determine, by self-examination, that no bones were broken. And,

b. The Plaintiff was and is aware of the limitations of modern medicine to deal with burses and the kinds of injuries inflected upon the Plaintiff by the Defendant. The Plaintiff had no desire to receive:

I. Unnecessary x-rays on bones which he already knew were not broken, accompanied by the unwanted radiation. And,

II. Undesirable pain medication, most of which has side-effects that are worse than enduring the pain. And,

III. The Plaintiff is aware that pain is the body's natural signal that a particular movement not good at that point in the healing process. And,

IV. Masking pain by drugs is counter-productive in the long run. And,

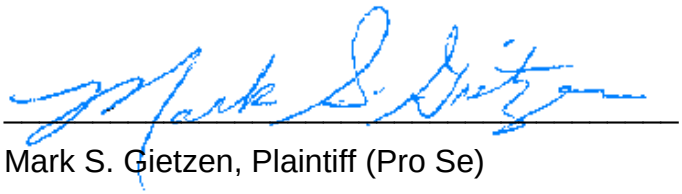
V. The Plaintiff knew that the only sensible directive from a Professional Medical person would be; vigorous daily exercise, which the Plaintiff already engages in on a daily basis.

VI. Therefore, the only remaining reason to have gone to a doctor or to a hospital would have been for legal reasons only… to build a case, which the Plaintiff finds to be disingenuous.

4. The Defendants Motion also states in the section titled; STATEMENT OF UNCONTROVERTED FACTS that the Plaintiff did not allege any economic damages. While it is true that the economic damages were not enumerated in my petition, the Small Claims filing does not request any such enumeration. It would be incorrect to assume that there were no economic damages, because in fact the economic damages far exceed the $4000 monetary value of this case.

Therefore, the Plaintiff requests that the Court entirely deny the Defendant's Motion for Judgment Against Plaintiff.

Respectfully submitted,



Mark S. Gietzen, Plaintiff (Pro Se)

NOTICE OF HEARING

The above **RESPONSE TO DEFENDANT'S MOTION FOR JUDGMENT AGAINST PLAINTIFF** will be heard on Tuesday, February 5, 2008 at 9:00 AM in the Sedgwick County Courthouse in Wichita, Kansas.

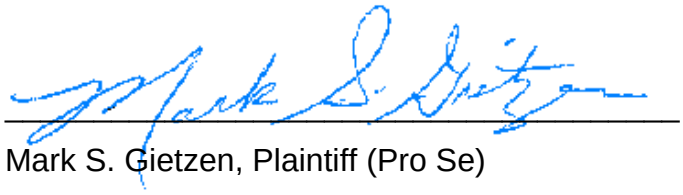
CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2008, a true and correct copy of the foregoing **RESPONSE TO DEFENDANT'S MOTION FOR JUDGMENT AGAINST PLAINTIFF** was hand-delivered to:

George R. Tiller
5101 East Kellogg Drive

Wichita, KS 67218

(At the front gate, via Security Guard)



Mark S. Gietzen, Plaintiff (Pro Se)